

Message Text

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FOR AMBASSADOR BUNKER FROM BELL

EO 11652: GDS

TAGS: PFOR, PN

SUBJ: U.S.-PANAMA TREATY NEGOTIATIONS: STATUS OF FORCES AGREEMENT

I. SUMMARY

PANAMA AND THE UNITED STATES REACHED AGREEMENT ON A SOFA AT THE DEPUTY NEGOTIATOR LEVEL ON FEBRUARY 22.

DEFENSE DEPARTMENT REPRESENTATIVES HAVE EXPRESSED SOME DISCOMFITURE AT THE LANGUAGE OF ARTICLE FIVE RELATING TO THE FLYING OF FLAGS ON DEFENSE SITES. THEIR POSITION IS DIFFICULT TO UNDERSTAND BECAUSE THE LANGUAGE SECURES WHAT THE UNITED STATES SOUGHT AND THE CONGRESS WILL EXPECT.

THE FOLLOWING IS FOR YOUR POSSIBLE USE SHOULD THE DEFENSE DEPARTMENT ASK THAT YOU CONSIDER REOPENING ARTICLE FIVE WITH PANAMA AT THE CHIEF NEGOTIATOR LEVEL DURING YOUR FORTHCOMING SESSIONS IN PANAMA. RECOMMEND AGAINST REOPENING, CERTAINLY AT THIS DELICATE STAGE OF OVERALL NEGOTIATION.

II. BACKGROUND:

DURING THE SOFA TALKS ON CONTADORA, PANAMA RECEDED FROM ITS LIMITED OFFICIAL USE

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NATIONALISTIC POSITION THAT ONLY THE PANAMANIAN FLAG SHOULD FLY

ON THE DEFENSE SITES. THE FOLLOWING LANGUAGE WAS NEGOTIATED BY BARRINGER, AND WAS INCLUDED IN THE PARTIAL SOFA TEXT WHICH GONZALEZ-REVILLA AND I INITIALED ON FEBRUARY 4:

"(1) WITHIN THE DEFENSE SITES, THE FLAGS OF THE REPUBLIC OF PANAMA AND THE UNITED STATES SHALL BE FLOWN, IN THE MANNER AGREED UPON IN THE JOINT COMMITTEE. THE PANAMANIAN FLAG SHALL OCCUPY THE POSITION OF HONOR.

(2) OUTSIDE THE DEFENSE SITES, ONLY THE FLAG OF THE REPUBLIC OF PANAMA WILL BE FLOWN".

SUBSEQUADNTLY DEPARTMENT OF DEFENSE REPRESENTATIVES IN WASHINGTON INFORMED US THAT THIS LANGUAGE HAD TWO WEKNESSES. FIRST, THEY BELIEVED THAT PARAGRAPH (1) COULD BE CONSTRUED TO MEAN THAT UNLESS THE JOINT COMMITTEE REACHED AGREEMENT ON THE MANNER OF DISPLAYING THE FLAGS, NEITHER FLAG COULD BE FLOWN ON THE DEFENSE SITES. SECOND, PARAGRAPH (2) COULD BE CONSTRUED AS MEANING THAT NO UNITED STATES FLAGS COULD BE FLOWN ANYWHERE IN PNAMA EXCEPT ON THE DEFENSE SITES--AND, THUS, COULD PREDJUDICE YOUR ABILITY TO OBTAIN SOME FLYING OF UNITED STATES FLAGS FOR THE NEW CANAL ADMINISTRATION.

THE LANGUAGE AGREED TO DURING THE FINAL TALKS IN WASHINGTON READS AS FOLLOWS:

"(1) ALL OF THE TERRITORY OF THE REPUBLIC OF PANAMA, INCLUDING THE DEFENSE SITES, SHALL BE UNDER THE FLAG OF THE REPUBLIC OF PANAMA AND, CONSEQUENTLY, WITHIN SUCH SITES THE PANAMANIAN FLAG SHALL ALWAYS OCCUPY THE POSITION OF HONOR. WITHIN THE DEFENSE SITES, THE FLAG OF THE UNITED STATES SHALL BE FLOWN JOINTLY WITH THE PANAMANIAN FLAG. THE JOINT COMMITTEE SHALL DETERMINE THE MANNER OF DISPLAYING THE FLAGS.

(2) AT THE ENTRANCES, OUTSIDE THE DEFENSE SITES, ONLY THE FLAG OF THE REPUBLIC OF PANAMA WILL BE FLOWN."

THE PANAMANIAN HAVE REPEATEDLY STATED THAT THEY ARE WILLING TO RETURN TO THE FEBRUARY 4 LANGUAGE IF THE UNITED STATES WISHES TO DO SO.

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DEFENSE DEPARTMENT REPRESENTATIVES HAVE REPEATEDLY STATED, HOWEVER, THAT THEY PREFER THE FEBRUARY 22 LANGUAGE, SINCE IT ELIMINATES THE TWO WEAKNESSES -- BUT STILL ARE NOT PLEASED WITH THAT LANGUAGE. THEIR CURRENT DIFFICULTIES SEEM TO BE BASED ON THE VIEW THAT THE TERM "UNDER THE FLAG OF PANAMA" IMPLIES SOME SORT OF "SUBORDINATION" OF THE UNITED STATES TO PANAMA.

COMMENT:

PATENTLY THE UNITED STATES IS "SUBORDINATE" TO PANAMA ON DEFENSE SITES--THOSE SITES ARE LOCATED ON PANAMA'S TERRITORY, NOT THE UNITED STATES' MOREOVER, THE UNITED STATES' PUBLIC PUBLIC ADMISSION THAT IT CAN POSSESS ONLY "USE RIGHTS" IS IN ITSELF AN ADMISSION OF "SUBORDINATION".

III. POINTS FOR POSSIBLE USE WITH DEPARTMENT OF DEFENSE

1. THE FEBRUARY 22 LANGUAGE ACHIEVES ESSENTIAL UNITED STATES OBJECTIVES. FIRST, IT ENSURES THAT "THE UNITED STATES FLAG SHALL REPEAT SHALL BE FLOWN." IN CONTRAST TO THE FEBRUARY 4 LANGUAGE, IT DOES NOT LEND ITSELF TO THE INTERPRETATION THAT AN AGREEMENT THROUGH THE JOINT COMMITTEE IS A NECESSARY PRECONDITION TO THE FLYING OF FLAGS ON DEFENSE SITES.

SECOND, IT DOES NOT IMPLY THAT UNITED STATES FLAGS CANNOT BE FLOWN ELSEWHERE IN PANAMA.

2. THE NEW LANGUAGE SHOULD BE ACCEPTABLE TO THE CONGRESS BECAUSE IT DEMONSTRABLY ACHIEVES WHAT THE CONGRESS EXPECTS-- THAT THE UNITED STATES FLAG FLY OVER THE DEFENSE SITES. ANY CONGRESSMAN WHO HAS DIFFICULTY WITH THE FLAG LANGUAGE WILL ALMOST CERTAINLY HAVE FOUND OTHER SUBSTANTIVE LANGUAGE IN THE TREATY PACKAGE TO OBJECT TO. THUS, THE LANGUAGE ON FLAGS CANNOT BE EXPECTED TO CONSTITUTE A DECIDING FACTOR IN THE PROCESS OF CONGRESSIONAL APPROVAL.

3. IT WOULD BE TACTICALLY UNWISE TO RE-OPEN THE MATTER AT THIS TIME.

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WE HAVE SECURED A SOFA THAT MEETS ALL ESSENTIAL UNITED STATES REQUIREMENTS --INDEED MEETS THEM MORE FULLY THAN HAZTEEN ANTICIPATED. PANAMA CLEARLY WANTS TO PUT THIS ISSUE TO REST AND MOVE ON TO OTHER AREAS. TO RE-OPEN THE LANGUAGE ON FLAGS MIGHT RESULT IN PANAMA RE-OPENING, TO OUR DETRIMENT, OTHER POINTS OF MORE CONCERN TO US.

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